STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CENTRALIA SCHOOL DISTRICT, Employer, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Employee Organizations.	Case No. LA-S-102 (LA-R-327) Request for Reconsideration PERB Decision No. 519 PERB Decision No. 519a February 24, 1986

Appearance; William c. Heath for California School Employees Association.

Before Hesse, Chairperson; Morgenstern and Craib, Members.

DECISION

HESSE, Chairperson: The California School Employees Association (CSEA) requests reconsideration of Decision No. 519 issued by the Public Employment Relations Board (PERB or Board) on September 12, 1985. In that decision, PERB found that a severance petition filed by the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) was timely filed. CSEA's request is made pursuant to PERB Regulation 32410(a)[1] and is based on the contention that the underlying decision contains a prejudicial error of fact.

[1]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

We have reviewed the underlying decision in light of the arguments offered by CSEA in its request for reconsideration. The Board's findings of fact and conclusions of law set forth in that decision are incorporated herein. For the reasons noted below, we find no basis for altering our decision.

DISCUSSION

In Decision No. 519, the Board found that AFSCME had filed its petition during an appropriate window period as defined by PERB Regulation 33020.[2] The Board's decision was based on its conclusion that, because a premature contract extension constitutes a new and separate agreement, such an extension also creates a new and separate window period under Regulation 33020. A contrary interpretation of that Regulation, noted the Board, would permit the parties to a collective bargaining agreement, through an endless chain of premature extensions, to forever foreclose the employees' ability to exercise their right to change representatives.

In its request for reconsideration, CSEA does not dispute that, whenever a contract is extended, a new and separate window period is created. It argues, however, that, unless

---

[2]Regulation 33020 reads, in relevant part:

> "Window period" means the 29-day period established pursuant to Government Code sections 3544.l(c) and 3544.7(b)(l) which is less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the exclusive representative. . . .

employees have cause to rely on that new window period, the period can be "erased" by another, subsequent, contract extension.

CSEA does not expressly define what it means by the term "rely" as here used. It illustrates its argument, however, in the context of the case at hand. Thus, in the instant case, CSEA and the Centralia School District executed a contract in 1981 that, by its terms, was to be effective for a three year period, from August 1, 1981 to July 31, 1984. In each of the three years immediately following the 1981 execution of that contract, however, the parties executed "extensions" of each preceding contract. The terms of the contracts executed by CSEA and the District, then, were as follows:

Contract 1: August 1, 1981 to July 31, 1984

Contract 2: August 1, 1982 to July 31, 1985

Contract 3: August 1, 1983 to July 31, 1986

Contract 4: August 1, 1984 to July 31, 1987

CSEA acknowledges that each contract created a window period that would occur between 120 and 90 days before its stated expiration date. Upon the execution of contract 1, therefore, unit members could reliably plan on an opportunity to file for a representation election in April 1984. When contract 2 was executed, a new window period was created in April 1985. We concur. CSEA argues further, however, that unit members would not "rely" on the April 1985 period because of the availability of an earlier (and therefore better)

opportunity in April 1984. Any time prior to April 1984, then, argues CSEA, unit members would reasonably aim for the April 1984 window period and would disregard, i.e., not "rely on," the April 1985 period.

Once the April 1984 window period closed, suggests CSEA, unit members who might make plans to file for decertification would logically have assessed their existing circumstances. At that time (May 1984), unit members were covered by contract 3, which had replaced its predecessor in August 1983 and which, by its terms, would expire in July 1986. According to CSEA, unit members could then reasonably "rely," that is, begin to plan for exercising their right to file, based on the window period of contract 3. By May 1984, says CSEA, contract 2 had already come and gone, and with it, its 1985 window period; since no one had ever had reasonable cause to rely on it, the window period was eliminated by the subsequent contract extension.

While CSEA's theory shows a certain ingenuity, it must fail. CSEA has offered no authority for the proposition that open periods are determined by employee reliance. Although relevant case law holds that employees are entitled to rely on certain open periods, employee reliance neither creates nor defines window periods. Rather, PERB Regulation 33020 expressly provides that petitions may be filed not more than 120 days nor less than 90 days prior to the expiration of "a lawful written agreement." We find no language requiring "reliance" in the regulation.

CSEA also argues that it could have lawfully negotiated sequential three-year agreements without annual extensions, and the employees would then have been limited to one window period every three years. The theory it advances, notes CSEA, provides more frequent window periods than that. This is, of course, irrelevant. The fact is that CSEA chose not to negotiate true three-year agreements. instead it negotiated four three-year agreements, each giving rise to its own window period.

ORDER

Finding no prejudicial error of law or fact in its Decision No. 519, the Public Employment Relations Board DENIES the request for reconsideration of that decision.

Members Morgenstern and Craib joined in this Decision,